BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Friday the 23rd day of September 2022

CORAM : Miss. LEENA NAIR, ADMINISTRATIVE MEMBER
&
Mr.R.PADMANABHAN, JUDICIAL MEMBER

Appeal No.11 of 2022

M/s. TVH Estates Chennai Private Limited,
Represented by its Managing Director,
Mr.N.Ravichandran Narayanan. ... Appellant

-Vs-

P.Jai Narayanan Raj ... Respondent

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Adjudicating Officer in C.C.P.No. 146 of 2020 dated 18.11.2021.

P.Jai Narayanan Raj ... Complainant

-Vs-

M/s. TVH Estates Chennai Private Limited,
Represented by its Managing Director,
Mr.N.Ravichandran Narayanan. ... Respondent

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This appeal was taken on file on 18.03.2022 and came up for final hearing on 20.07.2022 in the presence of M/s. P.Vinodh Kumar, Counsel for the appellant and M/s.M.L. Joseph, K.Subhashini, Amar K.Panwar, R.S. Shakthivel, A.Aravind, K.V.Pawan Kumar and K. Aashika , Counsel for the respondent. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

For the sake of convenience the parties hereinafter will be referred to as per their rank and status before the Adjudicating Officer attached with TNRERA.

The case of the complainant in brief are as follows:

1. The complainant was allotted a flat bearing No.5252 at the 25th floor of the Tower 5 in the land development project promoted by the respondent. The name of the project was "TVH-OURANYA BAY" situated at Kazhipattur Village, Chengalpet Taluk, Kanchipuram District. The total sale consideration of the said apartment was fixed at Rs.49,49,590/-. A construction agreement and an agreement to sell undivided share of land were executed between the parties on 04.2.2013. The respondent undertook to hand over delivery of possession during September 2013 including the grace period. No such delivery of possession took place. When he Complainant insisted for delivery of possession the respondent / Promoter sent a letter on 14.03.2015 unilaterally postponing the date of

delivery to 15.08.2015. The complainant paid Rs.47,00,000/- on various dates. After four years, the respondent sent an email on 09.12.2019 demanding final payment of Rs.8,98,480/- failing which the allotment will be cancelled. The complainant was not satisfied with the quality of the construction. The respondent did not keep their promise even after expiry of 6 years. Therefore the complainant issued a legal notice to the respondent on 19.3.2020 intimating the cancellation of the flat due to delay in handing over of possession. Hence the complaint claiming refund of the amount paid with interest, compensation and also the costs.

The case of the respondent in brief is as follows:-

2. The project of the respondent does not fall within the purview of RERA Act, as the project was completed in the year 2015 itself. Therefore the complaint is not maintainable. The complainant did not made payments as agreed by him. No payment was made by the complainant after 20.12.2013. the complainant is yet to make the final payment of Rs.8,98,480/-. Instead of paying the said amount before taking possession of the flat, he had approached the RERA with false and baseless allegations. The respondent sent several emails requesting the complainant to pay the final payment of Rs.8,98,480/- and take possession of the flat. After waiting for 4 years the respondent sent an email on 28.09.2019, to the effect that if no payment was made the allotment will be cancelled. Since the complainant has not made stage wise payment the complainant is not entitle for any compensation as per clause 5 of the construction

agreement. Several attempts were made to settle the matter amicably, but the complainant did not cooperate. Hence the complaint is liable to be dismissed with costs.

3. After hearing both sides the learned Adjudicating Officer had allowed the complaint and directed the respondent/promoter to refund the entire amount of Rs.47,00,000/- to the complainant/allottee along with interest at 9.30% from the date of respective payments till repayment. The learned Adjudicating Officer also awarded a lumpsum compensation of Rs.2,00,000/- towards the mental agony suffered by the complainant/allottee. A sum of Rs.25,000/- was also awarded towards legal expenses incurred by the complainant/allottee. Aggrieved over the same the respondent/promoter has preferred this appeal before this Tribunal.

4. Heard both sides.

5. **Points for Determination:**

    1. Whether the awarding of compensation by the Adjudicating Officer is justified?
    2. Whether the Adjudicating Officer has jurisdiction to decide the issue of refund?

Point No.1:

6. At the outset there is no dispute between the parties that totally there are 6 Blocks were being developed by the builder in the said project. As found from Ex.A6 Construction agreement dated 04.2.2013 one flat in Block 5 of the proposed project was agreed to be allotted to the

Complainant / Allottee. The flat number was 5252. Regarding time frame for completion and handing over possession at page 45 paragraph 4(A) of the same agreement it is mentioned as follows:

> 4 (A) "The builder at request of the allottees undertakes to construct the aforementioned schedule E flat as their authorized representative. Barring unforeseen circumstances and subject to unforeseen conditions the builder undertakes to complete the construction of the premises and undertakes to deliver the schedule E mentioned flat within one month from the date of executing the agreement whichever is later along with a grace period of 6 months thereafter. (with regard to special amenities as specified and detailed in "annexure I" will be handed over to the allottees within 6 months from the date of completion of entire 6 blocks). The builder may in his discretion provide the license to the allottees only for the limited purpose to conduct functions like Grahapravesam, etc.,"

7. As found from the first part of the said clause extracted above, the builder undertakes to complete the construction of the premises and undertakes to deliver the schedule E mentioned flat **within one month** from the date of executing the agreement whichever is later (it appears some words are missing in the agreement itself) along with a grace period of 6 months. However as found from the second part of the same clause

extracted above, the builder has agreed that the Special amenities mentioned in Annexure- I will be handed over within 6 months from the date of completion of the entire 6 blocks.

8. As rightly pointed out by the counsel for the complainant/allottee the respondent/promoter not only failed to hand over the possession before due date i.e. 04.09.2013, but also unilaterally postponed the date of handing over of possession, after two years, to 15.08.2015, as found from the letter dated 14.03.2015 marked as Ex.A9 (refer page No.82 of the typed set of the appellant). As per this letter the possession should have been handed over at least by August 2015. But possession was not handed over even as per this letter.

9. On the other hand the learned counsel for the respondent/promoter brought to our notice about another letter dated 16.10.2015 marked as Ex.B3. By citing this letter the learned counsel argued that the construction was completed and ready for possession during October 2015 itself. We have carefully perused the said letter dated 16.10.2015. First of all it is not the letter of intimation about handing over of possession. It was only a preparatory letter asking the allottees to get prepared to pay the balance amount at the time of possession. No specific date of handing over of possession was mentioned in that letter. The letter only requests the allottees to prepare and take possession 10 days after the intimation of possession is sent by the respondent/promoter. As per the contents of this letter, intimation of possession will be sent separately in due course. But

no such letter regarding intimation of possession or not even an email communication was sent to the complainant/allottee. So Ex.B3 letter dated 16.10.2015 cannot be construed as letter of intimation of possession as argued by the Counsel for the Respondent / Promoter.

10. Instead of sending letter of intimation of possession, the respondent / Promoter was sending several emails demanding balance payment. Nowhere in the emails sent by the respondent/promoter it was mentioned that the apartment was ready for handing over of possession. The apartment ought to have been handed over before September 2013. No intimation of possession was given till date. Therefore, there was undue delay in handing over of possession. The cumulative cost of the flat comes to Rs.49,49,590/- excluding the service tax etc. The complainant/allottee admittedly paid Rs.47,00,000/-. Even after collecting 95% of the total cost the respondent/promoter did not come forward to send an intimation of handing over of possession to the complainant/allottee. The mental agony suffered by the complainant / allottee after parting with nearly half a crore rupees for over 7 years is appalling. Therefore the respondent / promoter is bound to compensate the complainant for the mental agony suffered by him for over 7 years. The compensation of Rs 2,00,000/- awarded by the Adjudicating Officer is very reasonable and justifiable. We answer this point accordingly.

Point No.2:

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11. The learned counsel for the respondent / Promoter, by relying upon the judgment of the Honble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Ors. dated 11.11.2021 had argued that the Adjudicating Officer has no jurisdiction to decide the issue of refund and interest. We have carefully perused the Supreme Court judgment relied on by the learned counsel for the appellant. After detailed discussion Hon'ble Supreme Court at paragraph No.86 has concluded as follows:

> 86. *From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.*

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From the above judgment of the Hon'ble Supreme Court, we find some force in the arguments of the learned counsel for the appellant. In the light of the Supreme Court Judgment it is very clear that the learned Adjudicating Officer has no power to order for refund, interest. He has got powers to adjudge compensation only. The direction of the learned Adjudicating Officer to refund the sum of Rs. 47,00,000/- to the respondent/allottee, was without jurisdiction, in the light of the judgment of the Hon'ble Supreme Court. As per the judgment of the Hon'ble Supreme Court the issue of refund has to be decided only by the Regulatory Authority. Therefore, the order of the learned Adjudicating Officer is non est in law.

12. The learned Adjudicating Officer ought to have segregated the complaint and proceeded to decide the issue of compensation only by directing the complaint to file a separate complaint before the Authority in respect of the claim of refund. We answer this point accordingly.

13. In the result the appeal is partly allowed. In so far as the awarding of compensation, the order of the Adjudicating Officer in C.C.P.No.146 of 2020 dated 18.11.2021 is hereby confirmed and the appeal in this regard is dismissed. However, the order of the Adjudicating Officer, in so far as it relates to refund and interest is concerned, the same is hereby set aside and the appeal is allowed in part. However it is hereby made clear that the respondent / complainant is at liberty to prefer a separate complaint in Form 'M' before the Tamil Nadu Real Estate

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Regulatory Authority in respect of the claim of refund and interest, in the light of the judgment of the Hon'ble Supreme Court stated supra. Connected Miscellaneous Applications pending if any are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 23rd Day of September 2022.

Sd-/xxxx
ADMINISTRATIVE MEMBER

Sd-/xxxx
JUDICIAL MEMBER

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